

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

ASPEN PROPERTIES GROUP, L.L.C.,)
As Trustee of the APG Holdings)
Revocable Trust,)
Plaintiff,)
vs.) CIVIL ACTION FILE
JEFFREY D. CORDTZ,) NUMBER 21EV000424
Defendant.)

MOTION TO SUBSTITUTE PLAINTIFF WITH REAL PARTY IN INTEREST

COMES NOW ASPEN PROPERTIES GROUP, L.L.C., As Trustee of the APG Holdings Revocable Trust ("Aspen Properties"), the Plaintiff in the above-styled civil action, and hereby files its Motion to Substitute Plaintiff with Real Party in Interest and shows this honorable Court in support thereof as follows:

O.C.G.A. § 9-11-17 provides that "[e]very action shall be prosecuted in the name of the real party in interest." This case was filed on January 21, 2021. Unbeknownst to the undersigned, on or about January 14, 2021, this loan was transferred by Plaintiff to Aspen Holdings Trust. A true and correct copy of the applicable Truth in Lending Act Ownership Transfer Notice is attached hereto as Exhibit "A" and is incorporated herein by reference. In Rogers v. Deutsche Bank

National Trust Co., 343 Ga. App. 655, 808 S.E. 2d 233 (2017), the lender (Ameriquest) had transferred the loan to Deutsche Bank more than two years before it had filed its complaint. Nevertheless, while looking at O.C.G.A. § 9-11-25 that provides for the substitution of a party where there is a transfer of interest, the court stated that O.C.G.A. § 9-11-17 controlled where, as in this case, the transfer occurred PRIOR to the lawsuit being filed. In order to add or drop parties under O.C.G.A. § 9-11-17, "the trial court must exercise its discretion in determining the change of status of parties." Foskey v. Vidalia City School, 258 Ga. App. 298, 303, 574 S.E. 2d 367 (2002). See also Smith v. Vencare, Inc., 238 Ga. App. 621, 519 S.E. 2d 735 (1999); Hodgskin v. Markatron, Inc., 185 Ga. App. 750, 365 S.E. 2d 494 (1988); Fleming v. Caras, 170 Ga. App. 579, 317 S.E. 2d 600 (1984). Among the factors a trial must consider in exercising its discretion is the prejudice to any litigant and the reasons and justifications for the failure to include the parties in the original suit. Smith v. Vencare, Inc., 238 Ga. App. 621, 519 S.E. 2d 735 (1999). See also Franklyn Gesner Fine Paintings, Inc. v. Ketcham, 252 Ga. 537, 314 S.E. 2d 903 (1984) (defendant was not misled or deceived).

Here, there would be no prejudice to the Defendant and the Defendant has not been misled or deceived. In fact, the time has not even run for his answer to be filed and it was his

attorney who alerted counsel for Plaintiff of the transfer. There would be no prejudice to the Defendant at this point and Plaintiff's counsel was unaware of the transfer until he was recently notified pursuant to the attached Truth in Lending Act Ownership Transfer Notice provided by counsel for the Defendant herein. Consequently, this Court should exercise its discretion in substituting Aspen Holdings Trust for Plaintiff herein.

WHEREFORE, Plaintiff requests that this honorable Court substitute Aspen Holdings Trust (as the real party in interest herein) for Plaintiff in this matter and for such other and further relief as this honorable Court deems just and proper.

Respectfully submitted this 11th day of February, 2021.

JOHNSON LEGAL OFFICES, L.L.C.

By: /s/ Larry W. Johnson
Larry W. Johnson
Georgia Bar No. 394896
Attorney for Plaintiff

138 Hammond Drive, Suite B
Atlanta, GA 30328
Telephone: (404) 486-2361
Facsimile: (404) 393-0826
Email: LJohnson@SuretyBondsAgency.com
CordtzAspenSubstituteMotion01

TRUTH IN LENDING ACT OWNERSHIP TRANSFER NOTICE

JEFFREY D CORDTZ
213 SOUTHERN HILL DRIVE
DULUTH, GA 30097

Re Loan Number: [REDACTED]

Property: 213 SOUTHERN HILL DRIVE, DULUTH, GA 30097

Transaction Date: 1/14/2021

Dear JEFFREY D CORDTZ

On or about 1/14/2021, the ownership of your mortgage loan in the original principal sum of \$ 200,000.00 secured by 213 SOUTHERN HILL DRIVE, DULUTH, GA 30097 has been transferred by APG Holdings Revocable Trust to Aspen Holdings Trust. Our name and contact information is as follows:

Aspen Holdings Trust

1221 W. 103rd St #108, Kansas City, MO 64114

Phone: 800-326-5799 Fax:

The assignment, sale or transfer of the mortgage loan does not affect any terms or conditions of the Mortgage, Deed of Trust and/or Note. We, or our agents, recorded or will be recording the transfer of interest in your loan in the official records of Gwinnett County, GA.

PARTIAL PAYMENT: Partial payments are accepted by your new lender, but are held by servicer (FCI Lender Services, Inc. as servicing agent for your lender) in a suspense account until a full payment is received. At that point, the full payment will be applied first to the interest due and then to principal, or as otherwise referenced in your Note and/or Security Instrument. If this loan is sold to another lender, they may have a different partial payment policy.

Please be advised that the loan will be serviced for our benefit by our servicer, FCI Lender Services, Inc., whose contact information is set forth below.

Should you have any questions regarding your loan, please contact our Servicer, FCI Lender Services, Inc., PO BOX 28720, Anaheim, CA 92809-0112, or call them at 800-931-2424 (toll free). Our servicer is authorized to collect payments on our behalf, and to resolve issues concerning payments on your loan.

NOTE: There is a distinction between the Creditor who is the owner of your loan, and the Servicer who is an agent that handles the servicing (payment processing) of your loan for the Creditor. Please contact the Servicer with any questions regarding your loan.

Sincerely,
Aspen Holdings Trust

EXHIBIT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO SUBSTITUTE PLAINTIFF WITH REAL PARTY IN INTEREST was served upon all parties electronically via the Court's system, plus the following who was also served by mailing same by United States First Class Mail in a properly addressed envelope with adequate postage affixed thereon to ensure delivery, addressed as follows:

Mr. Jeffrey D. Cordtz
213 Southern Hill Drive
Duluth, GA 30097

Richard S. Alembik, Esq.
RICHARD S. ALEMBIK, P.C.
315 West Ponce de Leon Avenue
Suite 250
Decatur, GA 30030-5100
Attorney for Defendant

This 11th day of February, 2021.

/s/ Larry W. Johnson
Larry W. Johnson
Attorney for Plaintiff

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